

President's update



By Iresha Herath, Solicitor, Mallesons Stephen Jaques

Following the Editorial Committee initiative in their 2004 *Young Lawyers Journal* themes, the Section focus in this final part of 2004 has been international issues.

The Hypothetical

The main Section event planned to coincide with the international theme was The Hypothetical – Law on Terror examining the relationship between law and the so-called “War on Terror”.

Held on 22 September at the Melbourne Town Hall in aid of CARE Australia, and before an audience of more than 1000 people, the Hypothetical was an extraordinary evening. Late Night Live host Phillip Adams took panellists, former Prime Minister of Australia The Rt Hon Malcolm Fraser; spokesperson for Word Vision Australia Dr Sekai Shand; criminal lawyer and former National Crime Authority chair Peter Faris QC; author and professor of politics at La Trobe University Robert Manne; part-time Commissioner of the Victorian Law Reform Commission and adjunct professor of the Faculty of Law, Monash University, Felicity Hampel SC; barrister and current Australia Defence association director David Forbes; comedian Rob Quantock; former Democrats leader and South Australian Senator Natasha Stott Despoja; solicitor, active member of the Liberal Party and vice-president of the Liberal Speakers Group Alan Anderson; barrister and human rights advocate Julian Burnside QC and Liberty Victoria vice-president Brian Walters SC through moral and legal twists and turns relating to the war.

It was an extraordinary experience watching the Hypothetical come together. The topic is immensely controversial and emotional. We did not intend in any way to make light of events that mark the “War on Terror”, rather we wanted

to discuss issues relating to the war in an open way. On the night, some of what was said brought applause from the audience, some of what was said was booed. Everyone was allowed to express their views freely (including a protestor) and our hope is that the event made people think and talk about the many complex issues relating to the war.

A year long Section project, members of the planning committee represented the Executive, Law Reform, Community Issues, Professional Development and Social Committees, as well as a variety of legal backgrounds. Everyone worked hard to put the event together, and the efforts are very much appreciated.

Australian Law Council observer at Guantanamo Bay military commissions

Recently I spoke at a forum about Australian legal scrutiny of the Guantanamo Bay military trials of Australian citizens David Hicks and Mamdouh Habib.

Mr Hicks, detained at Guantanamo Bay naval base for over two years, was charged in June with conspiracy to commit war crimes, attempted murder and aiding the enemy. Mr Habib, also detained at Guantanamo Bay, is yet to be charged.

Lex Lasry QC, Victorian Criminal Bar Association President, was chosen to observe Mr Hicks' preliminary hearing on behalf of the Australian Law Council. As an independent observer, he reported to the Law Council, not the Australian Government, although the Law Council has acknowledged Government assistance in obtaining trial access.

Before Mr Hicks' preliminary hearing, Law Council president-elect Stephen Southwood QC said: “Mr Lasry will provide an independent, impartial presence

at these proceedings. His role will be to monitor events and to objectively report on the fairness of the trial.”

Mr Lasry reported that the military trials of Mr Hicks and Mr Habib will be unlike any judicial proceeding seen in Australia or indeed post 1950s America (by an Executive Order in November 2001, President Bush revived a judicial structure previously used to try Lincoln assassination conspirators, Nazi saboteurs and Japanese war criminals). Hearsay evidence is permitted at these proceedings. Conversations between defendants and lawyers are not privileged and may be monitored. Proceedings are before a panel of military personnel, only one of whom has to be a lawyer. Exculpatory evidence may be kept from defendants. Coerced confessions or admissions are admissible. Convictions can be obtained by a 2/3 panel majority. And appeals go to a panel chosen by Defence Secretary Rumsfeld.

Following the release of Mr Lasry's report on 15 September 2004, the Law Council of Australia called on the Australian Government to remove Mr Hicks from the military commission process, and if necessary bring him home. The Law Council endorsed Mr Lasry's comments that: “*the problems with the military commission process are fundamental, and the lack of independence and impartiality that seems to be evident in the commission is something which really can't be fixed*”.

The Section

As this is the last 2004 edition of the *Young Lawyers Journal*, I would like to take this opportunity to thank members of the Section Executive and Committees for their hard work in 2004. I have very much appreciated their support and goodwill, and their contribution to the Section. It's been an incredibly busy year. Perhaps I am biased, but I think we can all be proud of the year, and look forward to what lies ahead for the Section. ■

Quick Quiz

Compiled by Kirsty Harvison & Jarrod Corbett

(Answers on page 20)

- 45 days after the September 11 attacks, the United States Congress passed the controversial USA PATRIOT Act. What is USA PATRIOT an acronym for?
- On 2 September 2004, the Federal Court of Malaysia overturned former Malaysian deputy Prime Minister Anwar Ibrahim's conviction for what crime?
- Alan Dershowitz was a member of OJ Simpson's legal dream team. It is rumoured that he may be Saddam Hussein's lawyer at the deposed leader's forthcoming trial. Jeremy Irons won an Academy Award for playing Dershowitz's client in a film about another famous case. What was the name of the film and who was Dershowitz's client?
- What institution was established by “The Rome Statute” of 17 June 1998?
- What term is traditionally used to describe five “top-tier” London commercial law firms?
- What does the latin phrase “*lex loci delicti*” mean?
- Giovanni Falcone and Paolo Borsellini were murdered in separate incidents in 1992. Who were they and why were they killed?
- What instrument of international law is known by the acronym CROC?
- Where in the Australian Constitution is the external affairs power?
- Who are Sian Elias and Beverley McLachlin?